

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ADRIAN SHERMAN,

Plaintiff,

vs.

ELDON VAIL,

Defendant.

NO. CV-10-458-JPH

**ORDER ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
SECOND AMENDED COMPLAINT**

1915(g)

Before the Court, without oral argument, is Plaintiff's Objections to the Court's Dismissal with Prejudice, ECF No. [32](#). On May 16, 2011, Magistrate Judge Hutton recommended dismissal of Plaintiff's Second Amended Complaint, ECF No. [22](#), challenging a policy which restricts prisoners' possession of pornographic material. Plaintiff, a prisoner currently housed at the Clallam Bay Corrections Center, is proceeding *pro se* and *in forma pauperis*; Defendant Vail has not been served.

After review of Plaintiff's Objections and the record as a whole, **IT IS ORDERED:** the Report and Recommendation is **ADOPTED IN ITS ENTIRETY** and the Second Amended Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief may be granted. See *Frost v. Symington*, 197 F.3d 348 (9th Cir. 1999) (recognizing that prisoners' access to sexually explicit material may be restricted without violating the First Amendment because such restrictions are rationally related to legitimate penological interests); *Mauro v. Arpaio*, 188 F.3d 1054 (9th

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1 Cir. 1999) (en banc) (same); *United States v. Bee*, 162 F.3d 1232 (9th
2 Cir. 1998)(There is no unqualified First Amendment right to "sexually
3 stimulating or sexually oriented materials."); *see also, e.g., Dawson v.*
4 *Scurr*, 986 F.2d 257 (8th Cir. 1993), *cert. denied sub nom., Shearon v.*
5 *Lynch*, 510 U.S. 884 (1993); *Thompson v. Patterson*, 985 F.2d 202 (5th
6 Cir. 1993).

7 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
8 who brings three or more civil actions or appeals which are dismissed as
9 frivolous or for failure to state a claim will be precluded from
10 bringing any other civil action or appeal *in forma pauperis* "unless the
11 prisoner is under imminent danger of serious physical injury." 28
12 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory
13 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's
14 complaint may count as one of the three dismissals allowed by 28 U.S.C.
15 § 1915(g) and may adversely affect his ability to file future claims.

16 IT IS SO ORDERED. The District Court Executive is directed to
17 enter this Order, enter judgment, forward copies to Plaintiff at his
18 last known address, and close the file. The District Court Executive is
19 further directed to forward a copy of this Order to the Office of the
20 Attorney General of Washington, Criminal Justice Division. The court
21 certifies any appeal of this dismissal would not be taken in good faith.

22 DATED this 27th day of June 2011.

23
24 s/ Edward F. Shea
25 EDWARD F. SHEA
26 United States District Judge

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